BEFORE THE OREGON ENVIRONMENTAL QUALITY COMMISSION

Petition to Initiate Rulemaking and Take Other Actions to Protect Existing and Designated Uses of Fish and Wildlife From Point and Nonpoint Sources of Pesticides

Table of Contents

- I. Introduction
- II. Requested Actions
 - A. Proposed Rulemaking
 - B. Directive to the Department to Amend the 2300A General Permit, Any Authorized Discharges Pursuant to that Permit, and Any Individual NPDES Permits Issued that Authorize the Discharge of Listed Pesticides
 - C. Petitions to the Oregon Department of Agriculture
 - 1. Petition to ODA to Adopt Reasonable and Prudent Alternatives in Basin Rules
 - 2. Petition to ODA to Adopt the Reasonable and Prudent Alternatives by Prohibiting the Sale and/or Use of the Listed Pesticides in Oregon and/or Requiring Additional Regulations at Point of Sale
 - D. Petition to the Board of Forestry
- III. The National Marine Fisheries Service Biological Opinions on the Effects of Insecticides, Herbicides and Fungicides on Pacific Northwest Salmon and Steelhead
- IV. The U.S. Fish and Wildlife Service Biological Opinion on the Effects of Pesticides on Lost River Sucker, Shortnose Sucker, Modoc Sucker, Warner Sucker, Hutton Tui Chub, and Lahontan Cutthroat Trout
- V. Effects of Pesticides on Aquatic Life and Limitations of Existing Regulatory Programs to Protect Aquatic and Aquatic-Dependent Species
 - A. EPA Has Failed to Incorporate Mandatory Reasonable and Prudent Alternatives Into its Pesticide Regulatory Program
 - B. Limitations of Existing Clean Water Act Programs to Protect Aquatic Life
 - C. ESA Consultations on the Effects of Pesticides on Oregon Threatened and Endangered Species Have Not Addressed Plummeting Populations of Amphibians and Reptiles in Oregon
 - D. EPA Initiation of ESA Consultations on California Frogs and Salamanders
- VI. The Clean Water Act Requires Oregon Action
 - A. Applicable Water Quality Standards
 - B. The State is Required to Have Published Methods for the Use of Narrative Criteria for Toxics
 - 1. EPA's Pesticides General Permit
 - 2. Oregon's General Permit 2300A
- VII. Need for Commission Adoption of the Proposed New Rules for Pesticides
 - A. The State of Oregon Must Adopt Measures to Meet Water Quality Standards, Including Protection of Designated Uses, in Coastal Watersheds Under the Coastal Zone Act Reauthorization Amendments

- 1. CZARA Requirements
- 2. Oregon's CŽARA Program
- 3. Litigation on Oregon's CZARA Program Approval
- 4. Oregon Cannot Rely on EPA Action to Address its CZARA Program Requirements for Pesticides
- B. Use of Pesticide's Addressed in Oregon Based on the FIFRA Labels Violates Oregon Water Quality Standards
 - 1. Violation of Designated Use Support
 - 2. Violation of Narrative Toxics Criteria
 - 3. Violation of Tier I of the Antidegradation Policy
- C. Inaction by Oregon Amounts to Authorizing Illegal "Take" Under the Endangered Species Act

VIII. Commission Authority

- A. Commission Action is Authorized by State Statutes
- B. Commission Action to Regulate Pesticides is Not Precluded by FIFRA
- IX. Commission Action Consistent with This Petition Will Support Oregon Policies
 - A. Granting This Petition Will Support the Agency's Toxics Reduction Strategy
 - 1. The Draft Toxics Reduction Strategy
 - 2. This Petition Supports the Goals of the Strategy
 - B. Oregon Policy on Protection of Sensitive Species Not Yet Listed as Threatened and Endangered
- X. The Proposed Rulemaking
- XI. Conclusion

Appendixe s

- A. Point-of-Sale Notifications.
- B. Reasonable and Prudent Alternatives Applicable to Species in Oregon for Which NMFS Found Jeopardy or Adverse Modification in its Biological Opinions for Pesticides.
- C. Reasonable and Prudent Measures, Terms and Conditions, and Conservation Recommendations Applicable to Species in Oregon for Which NMFS Found Jeopardy or Adverse Modification in its Biological Opinions for Pesticides.
- D. Summary of the Jeopardy and Adverse Modification Findings from NMFS BiOps.
- E. EPA Pesticide General Permit Reasonable and Prudent Alternatives, Reasonable and Prudent Measures, Terms and Conditions, and Conservation Recommendations.
- F. Reasonable and Prudent Alternatives Applicable to Species in Oregon for Which the USF&WS Found Jeopardy in its 1998 Biological Opinion for Selected Pesticides.
- G. Amphibians and Reptiles in Oregon: Oregon Spotted Frog, Columbia Spotted Frog, Western Pond Turtle, and Western Painted Turtle.
- H. EPA Pesticide General Permit Excerpts and Appendix I.
- I. NMFS Listed Resources of Concern.
- J. OAR 340-041-0034 Tables A and B.
- K. Other Persons Known to the Petitioner to Be Interested in the Rule